



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 25, 1994

Mr. Ivan J. Mlachak
Feldman & Associates
12 Greenway Plaza, Suite 1202
Houston, Texas 77046

OR94-684

Dear Mr. Mlachak:

On behalf of the Fort Bend Independent School District ("the district"), you ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. Your request was assigned ID# 28124.

The district received a request for information concerning its selection of an assistant principal at a certain elementary school. You say the district will provide the requested information, with the exception of the interview notes taken by members of the interview committee during interviews with each applicant. You assert that the interview notes are excepted from required public disclosure based on sections 552.101 and 552.111 of the Government Code.

Section 552.101 of the Government Code excepts from required public disclosure information that is considered to be confidential. This exception applies to information that is confidential under the common-law right to privacy as well as the constitutional right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). To be protected from disclosure under the common-law right to privacy the information must (1) contain highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person, and (2) be of no legitimate concern to the public. *Id.* at 685.

We have reviewed the representative samples of the requested information you sent this office. The notes document answers and questions concerning the job qualifications of each applicant. They also contain the interviewers' comments about the applicants and what appears to be the relative ranking of the applicants by the interviewers. The public has a legitimate interest in information about an applicant for public employment. See Open Records Decision No. 455 (1987) at 8. Therefore, the

district may not withhold any of the interview notes based on section 552.101 and the common-law right to privacy.

The constitutional right to privacy protects: (1) information about a person's decisions regarding matters related to marriage, procreation, contraception, family relationships, and child rearing and education, and (2) information regarding a person's right to decide the kind of personal facts he or she will disclose to the world. *See* Open Records Decision No. 600 (1992). The interview notes do not contain information that is protected under a constitutional right to privacy. *See* Open Records Decision No. 455.

552.111 excepts from required public disclosure

[a]n interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency

This exception applies to interagency or intraagency communications that consist of advice, recommendation, and opinion that pertain to the policymaking functions of the governmental body at issue. Open Records Decision No. 615 (1993). An agency's policymaking processes do not encompass internal administrative and personnel matters. *Id.* In addition, purely factual information is not excepted from disclosure under this exception. *See id.*


We believe the interview notes pertain to personnel matters. Therefore, section 552.111 of the Government Code does not apply.¹ *See id.* In conclusion, the requested information must be released.²

¹You suggest that this office should reconsider the interpretation of section 552.111 in Open Records Decision No. 615 (1993) in light of a July 25, 1994 ruling in *Klein Independent School District v. Lett*, No. 93-061897 (80th Dist. Ct., Harris County, Tex., July 25, 1994). This office is not a party to that action. Furthermore, appellate courts in Texas do not rely upon unpublished opinions as authority. *Wheeler v. Aldama-Luebbert*, 707 S.W.2d 213, 216 (Tex. App.--Houston [1st Dist.] 1986, no writ) ("An unpublished opinion of this Court or any other court has no authoritative value."); *see also* Tex. R. App. P. 90(i) ("Unpublished opinions shall not be cited as authority by counsel or by a court."); *Orix Credit Alliance v. Omnibank*, 858 S.W.2d 586, 593 n.4 (Tex. App.--Houston [14th Dist.] 1993, writ dismissed); *Carlisle v. Philip Morris, Inc.*, 805 S.W.2d 498, 501 (Tex. App.--Austin 1991, writ denied). For this reason, the Office of the Attorney General generally does not consider unpublished rulings in making determinations under the Open Records Act. This office continues to adhere to Open Records Decision No. 615.

²In reaching our conclusion here, we assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. *See* Open Records Decision Nos. 499, 497 (1988) (where requested documents are numerous and repetitive, governmental body should submit representative sample; but if each record contains substantially different information, all must be submitted). This open records letter does not address the release of any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Because case law and prior published open records decisions resolve your request, we are resolving this matter with this informal letter ruling rather than with a published open records decision. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Kay Guajardo". The signature is fluid and cursive, with the first name "Kay" written in a larger, more prominent script than the last name "Guajardo".

Kay Guajardo
Assistant Attorney General
Open Government Section

KHG/TCC/rho

Ref.: ID# 28124

Enclosures: Submitted documents

cc: Ms. Rhonda Jones
4910 Raven Ridge
Houston, Texas 77053
(w/o enclosures)